IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

CRP.No. 34 of 2007

ORDER DATED 24/11/2006 IN EP 62/2002 IN OS.71/1984 of MUNSIFF COURT, VAIKOM

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REVN. PETITIONER/JUDGMENT DEBTOR/DEFENDANT:

ANNAKUTTY THOMAS, (MENTIONED AS VARKEY ANNAKUTTY IN E.P.62/02 IN OS.71/84), KUMARAMKERIL,KULASEKHARAMANGALAM, VAIKOM, KOTTAYAM DISTRICT.

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENTS/PLAINTIFFS:

1. JOSEPH MATHEW, (DIED) MATTATHUMMEL, VALAMANGALAM THEKKEMURI, THURAVOOR THEKKU VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

2. JOSE MATHEW, S/O.JOSEPH MATHEW, DO. DO.

3. SRI.SIBY MATHEW, S/.JOSEPH MATHEW, DO. DO. NAME CORRECTED AS KURIAKOSE MATHEW.

4. MERCY, D/O.JOSEPH MATHEW, DO. DO. NAME CORRECTED AS MERCIAMMA MATHEW.

NAMES OF R3 & R4 ARE CORRECTED AS PER ORDER DT.26.2.07 ON IA 469/07

BY ADV. SRI.NIDHI BALACHANDRAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

C.R.P.No. 34 of 2007

ORDER

The third judgment debtor in O.S.No.71/84 on the file of the Munsiff's Court, Vaikom is the revision petitioner. The suit was filed by the original plaintiff/the first respondent, who passed away and his legal representatives are additional respondents 2 to 4, who are the additional decree holders. O.S.No.71/84 filed by the first respondent was dismissed by the trial court, but was decreed by the appellate court, vide Annexure 10 decree in A.S.No.40/90 on 24.10.1998. The decree so passed is to the following effect:

> "that the appeal is allowed. OS 71/84 on the file of the Munsiff's Court, Vaikom stands decreed as follows: The appellant/ plaintiff is entitled to get the portion of the shed marked PQRS in Exhibit C2(a)

> plan and falling outside the plot ABCD marked in Exhibit C2(a) plan demolished and removed at the expense of the respondents. Appellant/plaintiff is also entitled to a decree for recovery of possession of the property occupied by that portion of the shed on the south and east of plot ABCD. Appellant/plaintiff is also entitled to a decree for permanent prohibitory injunction restraining the respondents from trespassing into any other portion of the plaint schedule properties, excluding plot ABCD. Exhibit C2(a) plan forms part of the decree. Parties are directed to bear their costs."

2. As per the above decree, Exhibit C2(a) plan has been made part of the decree. What is allowed to be recovered by the appellant therein, who is the first respondent in this revision, is a portion of the shed marked as PQRS in Exhibit C2(a) plan, which falls outside the ABCD plot shown therein. Decree for possession of the property occupied by

that portion of the shed on the south and east of the ABCD plot is also granted to the appellant/ plaintiff. Injunction was also granted, restraining the respondents in the said appeal from trespassing into any other portion of the plaint schedule properties, excluding the plot ABCD. When the decree was put in execution, the additional third judgment debtor resisted the execution and the execution court, vide order impugned, directed the decree holder being put in possession of the property occupied by the shed specifically shown in Exhibit C2(a) plan as PQRS and falling outside the plot ABCD by demolishing the same and removing it at the expense of the third judgment debtor. It is the said order that is assailed by the petitioner/ third judgment debtor before me.

3. It is contended by the counsel for the petitioner that the third judgment debtor having possession was effecting improvements over an extent of forty five cents of land, adjoining the

shed; that she is now residing in the said shed and that all the improvements in the said forty five cents of land is effected by her and that under the cover of the decree, she may not be dispossessed from the land in her possession and enjoyment.

4. I do not see any such contention as having been raised by the petitioner on the trial side or in the appeal that the decree is only in relation to recovery of possession of the portion of the shed shown as PQRS and lying outside the plot ABCD demolishing that portion of the shed, which falls outside the ABCD plot. Whatever contentions are urged by the third judgment debtor, those are not contentions not considered on the execution side when the decree is for recovery of possession of the property occupied by the shed shown as PQRS, which falls outside the plot ABCD. When Annexure 10 decree has become final it cannot be heard from the petitioner/third judgment debtor that the decree is not executable. The decree is very

specific and Exhibit C2(a) plan, which is annexed to the decree shows the exact portion of the shed that has to be demolished and the portion of the land to be recovered, which was allowed in favour of the decree holder. The order of the court below, overruling the objections and ordering delivery, strictly in compliance with Annexure 10 decree of the appellate court, is legal and proper and does not deserve to be interfered with in this revision.

This revision, in the circumstances, is devoid of merit and is dismissed. The execution court may proceed with the execution without any further delay, considering the fact that the suit is of the year 1984.

2nd March, 2007 (K.P.Balachandran, Judge)

tkv